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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 29, 2002

APPLICATION OF

KENTUCKY UTILITIES COMPANY D/B/A
OLD DOMINION POWER COMPANY

CASE NO. PUE-2002-00323

Requesting waiver of certain
regulations governing electronic data exchange
between incumbent electric utilities
and competitive suppliers.

ORDER

On June 12, 2002, Kentucky Utilities Company d/b/a Old Dominion Power Company ("Old Dominion" or "Company") filed an application with this Commission requesting a waiver of certain regulations within Chapter 312 of the Virginia Administrative Code, Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"). In its application, the Company requested that the Commission grant its request for a waiver of 20 VAC 5-312-20 K and L of such rules governing the exchange of data between an incumbent electric utility, or local distribution company ("LDC") and competitive service providers ("CSPs") in accordance with Electronic Data Interchange ("EDI") standards as established by the Virginia Electronic Data Transfer Working Group ("VAEDT"). The Company indicated that it would comply with all other requirements of the Commission's Retail Access Rules. The Company's principal rationale for seeking this waiver is that the costs the Company will incur to achieve EDI compliance at this time are wholly disproportionate to any perceived benefit.¹

This Commission issued a July 19, 2002, Order Establishing Proceeding, in which we established a procedural schedule governing our consideration of the Company's waiver request.

¹ The Commission would note that the Company is not required to offer retail choice to its customers until January 1, 2004, in accordance with our Order in PUE-2000-00740 in which we established retail choice phase-in schedules for each of Virginia's incumbent electric utilities. In that same Order, we also authorized Virginia's electric cooperatives to delay the implementation of retail choice in their service territories until January 1, 2004.

Under that Order, the Commission Staff and any interested persons were permitted to file comments concerning the Company's request on or before August 9, 2002. The Company was authorized to file its response thereto by August 16, 2002. Thereafter, comments in this proceeding were filed by the Commission Staff ("Staff"), Virginia's electric cooperatives ("the cooperatives") and by Michel A. King. The Company also filed reply comments.

As stated in the Company's application, and summarized in the Staff's comments, as an alternative to the electronic exchange of data in compliance with EDI standards, Old Dominion proposes to exchange enrollment, switching, and billing transaction data via e-mail or facsimile. In conjunction with this alternative structure for exchanging data, the Company proposed in its waiver application that the Company be permitted to perform LDC consolidated billing on a manual basis until 100 customers within its service territory have switched to CSPs. When such a threshold is reached, Old Dominion proposed that the Company would notify the Commission and immediately undertake the task of outsourcing the development of a fully automated billing system compliant with then-current EDI standards.

During the period of system development, but for no longer than 12 months, Old Dominion further proposed that a customer switching to a CSP would receive two separate bills—one from the Company for distribution service and another from the CSP for electricity supply service. The Company asserted that the brief 12-month suspension of consolidated billing, which is required to develop a system that will ensure accurate, timely, and consumer-friendly bills, is not inconsistent with § 56-581.1 of the Code of Virginia ("Code") and would not dissuade market entry or long-term participation by CSPs. Additionally, Old Dominion notes that § 56-581.1 C of the Code authorizes the Commission, on its own motion or by application of a distributor, to delay any element of competitive billing services for up to one year to resolve issues such as billing accuracy, timeliness, and quality or adverse competitive impacts. Should the Commission find that the Company's potential 12-month suspension of consolidated billing is a delay as contemplated by this provision, Old Dominion requested that its waiver request also

be deemed an application requesting delay under § 56-581.1 C of the Code and urges the Commission to grant such request.

The Company states that its waiver request is prompted by its determination that Old Dominion's costs of full EDI compliance at this time—estimated at \$1.4 million over the next four years, followed by \$1.5 million per year in recurring costs—are not off-set by any meaningful benefits to its customers.² The Company believes that little, if any, switching to competitive suppliers will occur in its service territory since at least 86 percent of its customers are small, low-load factor residential customers, currently receiving bundled electric service at uniquely low rates, far below the national average and the rates of Virginia's other major investor-owned utilities.³ Thus, in the Company's view, its Virginia customer base will not likely attract competitive entry since—Old Dominion contends—CSPs are far more likely to favor larger, higher load factor customers in denser, urban markets.

The Staff noted in its comments that through its enactment of the Virginia Electric Utility Restructuring Act ("Restructuring Act" or "Act")⁴, the General Assembly has decided that competitive generation markets and the provision of retail choice to Virginia's electricity consumers are in the public interest. However, the Staff also notes that § 56-596 A of the Act specifically directs the Commission to take into consideration, among other things, the goals of advancement of competition and economic development in all relevant proceedings pursuant to the Act. Whether requiring the Company's EDI compliance will advance (or retard) the development of competition within its service territory is an issue this Commission must therefore consider as part of its review of this application.

² According to the Company, should such cost be recovered pro-rata from the Company's 29,500 Virginia retail customers, the monthly bill of a residential customer using 1000 kWh would increase by approximately nine percent. Smaller usage customers, of course, would experience a significantly higher percentage increase

³ Based on its analysis of information contained in the Edison Electric Institute's *Typical Bills and Average Rates Reports* (Winter 2001), the Company indicates the monthly bills of Virginia Electric and Power Company, The Potomac Edison Company, and Appalachian Power Company are 71 percent, 40 percent, and 18 percent higher, respectively, than those of Old Dominion for a residential customer using 1,000 kWh per month.

⁴ Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia.

With respect to the development of competition, the Staff observes in its comments that both nationally and in Virginia, CSPs have consistently emphasized that standardized business practices and electronic data exchange protocols are essential to the development and operation of competitive retail markets. Thus, in the Staff's view, the Company's proposed departure from data exchange standardization creates a barrier to competitive entry—particularly for those CSPs that are mass marketers attempting to serve a large volume of residential and small commercial customers. The Staff also points out that in addition to the burden of accommodating a non-standardized approach in its day-to-day business operations, a CSP, as a practical matter, would also be extremely limited in the number of customers that could be served within Old Dominion's territory.

The Staff however, suggests that despite its concerns about data exchange standardization and its role in helping build a competitive market, the Company's waiver request should be viewed in a broader context. The Staff believes that the Restructuring Act envisions—if not anticipates—an evolutionary transition to competitive retail markets. A good example can be found in those provisions of the Act concerning the implementation of competitive metering.⁵

The Staff also notes that with respect to the development of a competitive market, the Company's waiver request is unlikely to be the root cause of any delay in the development of a competitive market in the Company's service territory. At present, there appear to be larger and more significant competitive barriers within Virginia, generally. Electric retail access was implemented in a large portion of Virginia on January 1, 2002, yet nearly ten months later there are virtually no competitive offers of electricity supply service being made to retail consumers within these areas. The Staff also points out that the Company (although not presently open to

⁵ In § 56-581.1 E, the Virginia General Assembly directs the Commission to implement competitive metering services *subject to* such considerations as readiness of customers and suppliers, technological feasibility, and the technical and administrative readiness of local distribution companies.

retail competition) currently has the lowest average "price to beat" within the Commonwealth, making the Company's service territory potentially a daunting challenge to competitive entry.⁶

Thus, given the Company's low embedded costs and the present level of competitive activity in the areas of Virginia where retail access has been implemented, it seems unlikely—from the Staff's perspective—that significant market activity will rapidly develop in Old Dominion's service territory when it is opened to retail access in 2004. From this perspective, granting the Company's requested waiver would appear to have little immediate impact on the development of competition either in the Company's service territory or other parts of Virginia, especially when also considering the nature of the Company's small, isolated service territory in Southwest Virginia.

Beyond the Company's low price to compare, Old Dominion is unique in another key respect. Its Virginia service territory, which represents approximately five percent of the Company's total sales, is located in parts of five counties in the southwestern corner of Virginia. Furthermore, the Company is not interconnected with any other Virginia electric utility, thus essentially forming its own isolated retail market, separate from the rest of Virginia. Additionally, the majority of the Company's service territory is in Kentucky, which has not implemented retail access at the current time. Therefore, the significant cost of a new automated billing system would be incurred to serve an extremely small portion of the Company's customers.

Nevertheless, the Staff observes, Old Dominion is subject to the Act's requirement for the implementation of retail access within its Virginia territory. Under the Act, capped rates expire no later than July 1, 2007. The Staff emphasizes its belief that standardized business practices

⁶ According to the Staff, the 2002 average "price-to-compare" values for residential customers in the service territories of Virginia Electric and Power Company, Appalachian Power Company, and The Potomac Edison Company are approximately 3.7¢ per kWh, 3.3¢ per kWh, and 3.9¢ per kWh, respectively. By comparison, Old Dominion's unbundled regulated rate for electricity supply service (comparable to the "price-to-compare") is approximately 2.9¢ per kWh for a residential customer using 1000 kWh per month.

and automated data exchange systems must be developed, tested, and operating smoothly well before the expiration of capped rates to allow for market development.

Within this context, the Staff states that the potential ramifications of a decision in the instant proceeding must be considered carefully. With the disappointing results of initial market development described above, it is conceivable—in the Staff's view—that other parties may decide to seek waivers of Commission regulations based on similar arguments, including the imposition of significant cost without benefit and the (arguably) unique circumstances of the requesting parties. In that vein, the Staff cautions that such requests may become increasingly difficult to easily distinguish. Ultimately, the Staff is concerned that a liberal accommodation of a large number of waiver requests could serve to undercut the development of a competitive market and in a sense become a self-fulfilling prophecy.

The Staff concludes it cannot support Old Dominion's waiver request as proposed without a specified date for expiration of such waiver. The Staff, however, states that it would not object to the Commission granting Old Dominion's request for waiver of these regulations pursuant to 20 VAC 5-312-20 A, but only until January 1, 2005, with full EDI compliance required at that time and thereafter.⁷

The Staff has also recommended that in the event this Commission grants the waivers requested, the Company be directed to coordinate with the VAEDT in developing statewide guidelines for the proposed alternative non-EDI data exchanges, including, at a minimum, guidelines for standardizing format, content, and interpretation of any e-mail or facsimile data exchange.

⁷ The Staff expressed its uncertainty about whether Old Dominion's application could be considered by the Commission under § 56-581.1 C of the Restructuring Act. As noted by the Staff, that provision addresses the delay of competitive billing service "elements" (with corresponding reports to the Legislative Transition Task Force concerning such delays), and not delays of the provision of such services by LDCs or CSPs—at least not explicitly. Thus, in the Staff's view, the Commission's regulations adopted pursuant to § 56-581.1 of the Code, would seem to be a more appropriate framework in which to consider the Company's application herein. These rules authorize in 20 VAC 5-312-20 A, requests for waivers of the Retail Access Rules to be considered by the Commission on a case-by-case basis. And, we would also note that Old Dominion proposes to exchange enrollment, switching, as well as billing transaction data on a non-EDI compliant basis, which broadens the scope of the waivers required in any event beyond the limited scope of § 56-581.1 C.

The Cooperatives' filing expressed support for the Company's application; they requested that the Commission approve Old Dominion's application, characterizing the manual workaround as a "sensible approach." The Cooperatives state, in particular that they, like Kentucky Utilities, "are very concerned that the transition costs associated with implementing the system changes necessary for retail access in strict compliance with VAEDT standards may far outweigh any of the economic benefits that may be enjoyed by consumers who elect to shop for competitive electricity."⁸ The Cooperatives go on to state that "it makes no sense to expend financial resources to purchase, install and test systems that may never be utilized."⁹

Thus, the Cooperatives conclude that, on balance, Old Dominion's manual workaround approach allows retail access to proceed while reducing costs associated with VAEDT compliance otherwise required of all LDCs under the Retail Access Rules. They assert that this approach will cause minimal disruption and inconvenience to CSPs. Additionally, they suggest that the proposed business practice that relies on e-mail and fax transmissions to accomplish communications between CSPs and LDCs may actually serve to promote CSP entry into remove service territories in an economical fashion.¹⁰ In that vein, the Cooperatives suggest that the outcome of this proceeding may "prompt those Cooperatives that continue to prepare their systems for retail access to implement similar procedures for handling data transfers and billing until switching to CSPs becomes prevalent."

The comments of Michel A. King, as president of Old Mill Power Company, a CSP headquartered in Charlottesville, Virginia, raised some concern that permitting an incumbent electric utility to "develop a unique non-EDI system for communicating with CSPs while simultaneously allowing the Company to refuse to do business with CSPs on an EDI basis would set a precedent potentially encouraging other Virginia utilities to do the same."¹¹ Thus, Mr. King

⁸ August 9, 2002, Comments of the Virginia Electric Cooperatives in this docket, at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 6.

¹¹ August 6, 2002, Comments of Michel A. King at 2.

states, the potential proliferation of unique, non-EDI systems coupled with the right of utilities to refuse to do business with CSPs on an EDI basis, could suppress the development of competition in those service territories, indefinitely.

Accordingly, Mr. King recommends that to the extent that Old Dominion or any other incumbent utility is authorized to communicate and otherwise do business with CSPs on a non-EDI basis, that the Commission do the following: (i) establish a working group to determine statewide standards for such non-EDI transactions, i.e., standardizing on a statewide basis, format, content and interpretation of any e-mail, fax or other paper document transmitting EDI-like information, and (ii) limit the duration of an incumbent's authorization to utilize non-EDI communications system by providing such utilities a reasonable length of time to develop EDI-compliant systems, but not authorize such time to extend indefinitely.

On August 14, 2002, Old Dominion filed reply comments stating specifically that the Company requests that this Commission adopt the recommendations made by the Staff, and grant the Company a waiver of 20 VAC-5-312-20 K and L, through and including December 31, 2004. The Company's reply further states that it has no objection to the formation of a working group established for the purpose of determining statewide standards for non-EDI transactions. However, the Company asks that establishing such standards not delay the Commission's issuance of a waiver to the Company at this time.

NOW THE COMMISSION, having examined the Company's application, and the comments thereon by the Staff, the Cooperatives, and Mr. King, and having further reviewed the Company's reply comments, is of the opinion and finds that the Company request for the waivers of 20 VAC 5-312-20 K and L of the Retail Access Rules outlined in their application and discussed above, should be granted, subject to the modifications proposed by the Staff.¹²

¹² Inasmuch as we have granted the Company the relief it requests under the aegis of a waiver granted pursuant to 20 VAC 5-312-20 A of such rules, it is not necessary for us to consider the issue of whether the Commission can or should implement a 12-month delay of competitive billing "elements" (i.e., EDI compliance in this case) in the Company's service territory pursuant to § 56-581.1 C of the Restructuring Act.

The Commission finds that granting such a waiver through December 31, 2004, strikes a reasonable balance between the Virginia Electric Utility Restructuring Act's implementation schedule, and due consideration of Old Dominion's circumstances described in its application. The Commission's Retail Access Rules make reasonable allowance for waivers of their requirements on a case-by-case basis. Delaying the Company's obligation to become EDI-compliant for a twelve-month period beyond its retail choice phase-in deadline (January 1, 2004), should result in no harm to the development of a competitive market for retail generation in Virginia. In the meantime, that delay will provide the Company an additional year to prepare for the significant investment required to achieve that compliance, as described in its application, herein.¹³

We are, however, sensitive to Mr. King's concern that the implementation of unique non-EDI data exchange systems could discourage CSP entry into service territories served by EDI non-compliant utilities. At a minimum, a variety of such non-EDI systems would impose practical burdens on CSPs seeking competitive entry.

Thus, in keeping with Mr. King's concerns and the Staff's recommendation in that regard, we will require that the Company coordinate with the Staff, the VAEDT, and other interested parties in developing statewide guidelines for proposed alternative non-EDI data exchanges, including, at a minimum, guidelines for standardizing format, content, and interpretation of any e-mail or facsimile data exchange.

Accordingly, IT IS ORDERED THAT:

(1) The Company's application for waivers of 20 VAC 5-312-20 K and L of the Commission's Retail Access Rules is granted through and including December 31, 2004, subject to the modifications proposed by Staff and more fully detailed in this Order. On and after

¹³ We would also note that in our August 21, 2002, Order establishing rules and regulations governing consolidated billing services in Case No. PUE-2001-00297, we permitted LDCs to implement *interim* "workarounds" of standardized business practices and EDI protocols.

January 1, 2005, full EDI compliance in accordance with the Commission's then current Retail Access Rules, shall be required of the Company.

(2) The Company shall forthwith coordinate with the Staff, the VAEDT, and all interested parties in developing statewide guidelines for proposed alternative non-EDI data exchanges, including, at a minimum, guidelines for standardizing format, content, and interpretation of any e-mail or facsimile data exchange.

(3) The waiver granted Old Dominion shall become effective upon the entry of the Commission's Order herein, and shall not be contingent upon the development of statewide guidelines for proposed alternative non-EDI data exchanges described in Ordering Paragraph (2) above. However, to the extent that such guidelines are developed and adopted, then Old Dominion shall promptly conform its non-EDI data exchanges to such guidelines as soon as practicable following their adoption.

(4) There being nothing further to come before the Commission in this matter, this case shall be removed from the docket and the papers filed herein placed in the file for ended causes.